

### **REMARKS**

Claims 27-32 were under examination in the outstanding Office Action dated April 13, 2009. The features of claim 31 have been incorporated into claim 1 ("wherein said administering steps of (a) and (b) are concurrent"), and claim 31 has been canceled and the dependency of claim 32 amended. This amendment complies with a requirement of form expressly set forth in the outstanding office action and further puts this case in better condition for consideration on appeal. Accordingly, this amendment is in compliance with 37 CFR § 1.116 and entry thereof is respectfully requested. Applicants make this amendment without disclaimer of any subject matter and reserve the right to file a continuation application to pursue the original scope of claim 27.

New claims 46-49 have been added. Claim 46 specifically recites "wherein the antibody is administered prior to the VEE vector." This claim language is supported by the application as originally filed at page 13, line 32 to page 14, line 2, which recites: "The antibody may be administered to the subject prior to, subsequent to, or concurrently with the alphavirus vector." New dependent claims 47-49 are identical to original claims 28-30, except that they depend from base claim 46 rather than claim 27.

Applicants note with appreciation that the previous enablement rejection has been withdrawn. The only remaining issues are the obviousness rejection over Johnston et al. in view of Gould et al. Further, claims 31 and 32 are objected to as directed to allowable subject matter, but depending from a rejected base claim. These issues are addressed individually below following the Interview Summary.

### **Interview Summary.**

Applicants wish to express their appreciation to the Examiner for the time and courtesy extended to Applicants' representative, Karen A. Magri, during the telephonic interview on July 10, 2009. During the course of the interview, the outstanding rejection under 35 U.S.C. § 103 was discussed. Further, the possible addition of new claims reciting that the antibody is administered prior to the virus was discussed. The Examiner tentatively indicated that such claims would be allowable.

**The Claims are Patentable over Johnston et al. in view of Gould et al.**

Claims 27-30 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over WO 95/32733 (Johnston et al.) in view of Gould et al. (*J. Gen. Virol.* 70:1605-1608 1989)).

the outstanding Office Action also indicates that claims 31 and 32 are objected to as being dependent on a rejected base claim, but would be allowable if rewritten in independent form to include all the features of the base claim and any intervening claim.

Applicants respectfully disagree with this rejection for the reasons of record. However, to expedite the prosecution of this application to allowance, the features of claim 31 have been incorporated into base claim 27, and claim 31 has been canceled. Since claim 31 was free of the outstanding rejection, claim 27 as amended is free of the rejection as well, as are dependent claims 28-30 and 32.

New independent claim 46 recites "wherein said antibody is administered prior to said VEE vector." As discussed during the telephonic interview, there is no teaching or suggestion in Johnston et al. or Gould et al., taken alone or in combination, to administer the antibody to the subject prior to administering the virus. As acknowledged in the Office Action (page 3), Gould et al. observed antibody-dependent enhancement (ADE) of neurovirulence when antibody was administered three days after Yellow Fever Virus, thereby allowing the virus to establish a productive infection (Gould et al., Abstract). Accordingly, one of ordinary skill in the art would have had no suggestion or motivation regarding the subject matter of new claim 46, or new claims 47 to 49 which depend therefrom, based on Johnston et al. in view of Gould et al.

In light of the foregoing discussion, the Applicants submit that the subject matter of claims 27-30, 32 and 46-49 is novel and nonobvious over Johnston et al. in view of Gould et al. and respectfully request that the rejection under 35 U.S.C. §103 over these references be withdrawn.

**Conclusion.**

Having addressed all of the issues raised by the Examiner in the pending Office Action, Applicants respectfully request the withdrawal of the pending rejections and allowance of the pending claims to issue. Should the Examiner have any remaining concerns, it is respectfully request that the Examiner contact the undersigned attorney to

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expedite the prosecution of this application to allowance.

Respectfully submitted,



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